

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

No: 3:05CV359-MU

NEXTEL SOUTH CORP.,  
a Georgia corporation,

Plaintiff,

V.

TOWN OF HUNTERSVILLE, NORTH  
CAROLINA,

Defendant.

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

## CONSENT JUDGMENT

Plaintiff Nextel South Corp. (“Nextel”), having filed its complaint on 17 August 2005, and defendant Town of Huntersville, North Carolina (“the Town”), having filed its answer on 29 November 2005, and plaintiff and defendant, through their respective attorneys, having consented to the entry of this final Consent Judgment without trial or adjudication of any issue of fact or law, and without this Consent Judgment constituting evidence against or admission by any party with respect to any issue of fact or law;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter and each of the parties to this action. The complaint states a claim which, upon proper proof, may support an award of relief under the Telecommunications Act of 1996, specifically one or more provisions of 47 U.S.C. §332(c)(7)(B).
2. Venue is proper in this district.

3. This matter is hereby remanded to the Town and the Board of Commissioners thereof are instructed to approve a revised zoning petition (Petition #RO4-13) of a 5.25 acre portion of Tax Parcel 015-191-02 (a 12.3 acre tract located at 11401 McCoy Road, approximately .2 miles south of the intersection of Hambright Road and McCoy Road), rezoning the subject property from R (Rural) to SP-CD (Special Purpose – Conditional District) based upon a site plan revised and provided by Nextel to depict a proposed maximum 120 foot monopole commercial communications tower (rather than the previously proposed 160 foot tower) and further providing on the plan notes that said tower shall be constructed with a weight bearing capacity and design sufficient to accommodate at least two additional sets of antennae.

4. Upon having approved the conditional district rezoning described above, the Town shall provide such documentation (if any) as may be necessary for Nextel to present to Mecklenburg County for purposes of obtaining a building permit for the commercial communications tower.

5. Nextel shall comply with all Town ordinances, as well as all state and federal laws and regulations, in the construction and operation of the commercial communications tower. Nextel further shall provide to other telecommunications providers opportunities for co-location of equipment on the tower to the extent the weight capacity and height of the tower allow, subject to commercially reasonable terms.

6. The Court shall retain jurisdiction and venue over this matter for purposes of enforcing and resolving any dispute concerning or arising out of this Consent Judgment. The parties to this Consent Judgment shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Judgment

prior to bringing such matters to the Court for resolution. In all other respects the entry of this Consent Judgment concludes this litigation.

7. Each party shall bear its own costs and attorneys' fees related to this action.

IT IS SO ORDERED.

Signed: August 1, 2006



Graham C. Mullen  
United States District Judge



The undersigned hereby apply for and consent to the entry of this Judgment.

NEXTEL SOUTH CORP.,  
a Georgia Corporation

TOWN OF HUNTERSVILLE,  
NORTH CAROLINA

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